IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

Crl.MC.No. 8123 of 2001()

CC.582/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM

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PETITIONERS: ACCUSED 2 AND 3

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1. MUHAMMADUNNY, S/O.BEERAVU, INIKKAL HOUSE, ANDATHODU DESOM, CHAVAKKAD.

2. SINABA, W/O. MUHAMMED, INIKKAL HOUSE, ANDATHODE DESOM, CHAVAKKAD.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS:

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1. RAMLATH, D/O.KUNJUMUHAMMED, PANIKKAVEETIL AYYATHAYILKATTIL HOUSE, EDAKKAZHIYOOR, CHAVAKKAD.

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

3. ISMAYIL, S/O.MUHAMMED, INIKKAL HOUSE, PUNNAKKAKULAM VILLAGE, ANDATHODE DESOM, CHAVAKKAD. (DELETED)

R3 DELETED FROM PARTY ARRAY AS PER ORDER DT. 3/8/2005 IN CRL.MA.9481/05 IN CRL.M.C. 8123/01.

BY PUBLIC PROSECUTOR SRI.V.T.K.MOHANAN.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/3/2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.6156/2001
IN CRL.M.C. 8123/2001.

DISMISSED.

12/3/2007 SD/- A.K. BASHEER, JUDGE.

(TRUE COPY)

A.K. Basheer, J.

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Crl.M.C.No. 8123 of 2001-A

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Dated this the 12th day of March, 2007.

O R D E R

Petitioners who have been arraigned as accused Nos.2 and 3 in a crime registered by the Police for offences punishable under Section 406 and 420 read with Section 34 IPC have preferred this petition under Section 482 of the Code of Criminal Procedure seeking to quash the above proceedings pending against them before the Judicial Magistrate of First Class, Kunanmkulam in CC.No.582/2000. Petitioner's son is accused No.1 in the above case.

2. The Police had registered the above case against the petitioners and their son on the basis of a complaint lodged by respondent No.1 herein, who is their former daughter in law. It is the admitted position that petitioner's son had divorced respondent No.1 some time back. The case of respondent No.1/ former wife appears to be that petitioners and their son had misappropriated some of the ornaments, utensils etc. which were given to her at the time of her marriage. It is not necessary to refer to the various allegations in the complaint in detail for the purpose of disposal of this case.

3. It is contended by the learned counsel that the prosecution launched against the petitioners is totally vitiated and unsustainable. In support of the above plea, learned counsel places heavy reliance on the so called “finding” entered by the Judicial Magistrate of First Class, Chavakkad in his order in MC.9/97. A copy of the above order is on record as Annexure 1.

4. In the proceeding which was initiated under section 3 of the

Muslim Women (Protection of rights on Divorce) Act 1986, respondent No.1 had claimed maintenance for the period of iddat, fair provision and maintenance etc. from her former husband (Though the former husband was impleaded in this proceeding as respondent No.3 initially, he was removed from the party array on an application filed by the petitioners). Over and above the two claims mentioned above, respondent no.1/former wife had also made a claim for return of gold ornaments weighing eleven sovereigns and cash of Rs.25,000/- plus Rs.6500/- being the value of utensils. The learned Magistrate allowed certain sums towards maintenance for the period of Iddat and also towards fair provision and future maintenance. It is not necessary to deal with that aspect of the case since we are not concerned with the said part of the order passed by the learned Magistrate. As regards the claim for return of gold ornaments, cash and value of utensils, the learned Magistrate had declined the prayer made by the former wife.

5. It is contended by learned counsel for the petitioners that the above finding entered by the learned Magistrate will disentitle respondent No.1/de facto complainant from prosecuting the petitioners. In other words, the contention is that the learned Magistrate having already found that respondent No.1 was not entitled to receive any amount from her former husband, towards the value of ornaments, utensils etc. the very substratem of the criminal charge would fall to the ground.

6. I am afraid the above contention is totally misconceived for reasons more than one. In this context it is necessary to refer to the relevant portion of the order passed by the learned Magistrate in Annexure 1 which reads thus:

"...The evidence regarding the giving of

household utensils valued Rs.6500/- to the petitioner at the time of taking her to the house of the counter petitioner is also vague and suspicious. So according to me, there is no cogent, convincing and reliable evidence in this case to show that the counter petitioner received Rs.25,000/- from the father of the petitioner at the time of fixing the marriage and he misappropriated 11 sovereigns of gold ornaments and household utensils valued Rs.6500/- given to the petitioner. Moreover, in the petition, the petitioner has no claim for the value of the ornaments, utensils and cash misappropriated by the counter petitioner. It is stated in the petition that the petitioner would initiate separate proceedings for realisation of the value of the ornaments, utensils and cash misappropriated by the counter petitioner. In the circumstances, according to me, the petitioner is not entitled to receive any amount from the counter petitioner on these counts and the point found accordingly."

(emphasis supplied)

Learned counsel has laid heavy emphasis on the observation made by the learned Magistrate that respondent No.1 is not entitled to receive any amount towards the value of ornaments, utensils etc. He contends that the above "finding" will cut at the root of the prosecution disentitling the de facto complainant in proceeding against the petitioners for offences punishable under Sections 406 and 420 read

with Section 34 IPC.

7. It is pertinent to note that petitioners were not parties in the above proceedings under Section 3 of the Act. More importantly, respondent No.1 had not pressed the above claim before the learned Magistrate. She had reserved her right to make the above claim in appropriate proceedings later. Further, the petitioners cannot be heard to say that they cannot be prosecuted for a criminal charge under section 406 and 420 merely because the claim made by the de facto complainant in a proceeding under section 3 of the Act against her former husband had been turned down. It is trite that a proceeding under the provisions of the Act 1986 is of quasi civil in nature. Rule 4 of the Muslim Women (Protection of Rights on Divorce) Rules 1986 postulates for summary trial under the Crl.P.C. However it is contended by the learned counsel that Annexure 1 order indicates that the learned Magistrate had dealt with the points raised in the case in an elaborate manner. He contends that there is nothing on record to show that the Magistrate had dealt with the above case in a summary manner as provided under Chapter 11 of the Code. I am not impressed with the above contention. The fact remains that the learned Magistrate had not considered the claim of the former wife for return of ornaments or value of the utensils since she had not pressed that claim before the court. Even as regards the entrustment, the observation of the learned Magistrate that there is no cogent, convincing or reliable evidence with regard to such entrustment, it is clear that the court only refers to entrustment of ornaments and cash of Rs.25,000/- . Be that as it may. In the case against the petitioners, the prosecution will have to necessarily prove beyond reasonable doubt that the petitioners had committed the offences alleged against them. Petitioners will undoubtedly get an

opportunity to defend their case. We are at a stage where the Police has laid the charge sheet before the Court. The evidence is yet to be adduced. It may not be proper on the part of this Court to quash the above proceedings at the threshold invoking the inherent power under Section 482 of the Code especially in a case of this nature. I hasten to add that I am not expressing any opinion on the merits of the case advanced by the petitioners. It will be open to them to urge all their contentions before the trial court at the appropriate stages. It may also be open to them to plead for a discharge in the nature of the materials produced by the prosecution before the court below.

8. Learned counsel has invited my attention to a large number of decisions with regard to the nature of the proceedings before the Magistrate under section 3 of the Act. It is contended by the learned counsel that a proceeding under Section 3 is exclusively of a civil nature and therefore the finding entered by the learned Magistrate in the said proceeding will be binding on the parties. For the reasons stated by me already I am not persuaded to accept the above contention.

9. Learned counsel has also relied on some decisions in support of his contention regarding the principles of res judicata. Yet again, I am afraid the contentions raised by the petitioners are totally misconceived and untenable.

The Crl. M.C is devoid of any merit. It is accordingly dismissed.

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A.K. Basheer,
Judge.

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12/3/2007.